



**Legislative Bulletin.....December 1, 2014**

**Contents:**

**H.R. 5421 - Financial Institution Bankruptcy Act (Bachus, R-AL)**

---

---

**H.R. 5421 - Financial Institution Bankruptcy Act (Bachus, R-AL)**

**Order of Business:** [H.R. 5421](#) is expected to be considered on December 1, 2014, under a motion to suspend the rules and pass the bill, which requires a two-thirds majority for passage.

**Summary:** H.R. 5421 would establish a new expedited bankruptcy process that could be used to wind down large financial institutions, including bank holding companies.

This bankruptcy process would allow the court system to transfer assets of the failed financial institution to a bridge company. The bill would also impose a 48-hour stay on the ability of creditors to the financial institution to exercise their rights to modify or cancel certain contracts, potentially causing losses for the creditors.

Covered financial institutions would be able to petition to enter into the new bankruptcy proceedings.

The Federal Reserve also would have the ability to put a financial institution into this bankruptcy process if the institution:

- 1) has incurred losses that will deplete all or substantially all of the capital of the institution and there is no reasonable prospect for the institution to avoid depletion;
- 2) is insolvent;
- 3) is not paying or is unable to pay its debts;
- 4) or will enter into one of the above conditions so “sufficiently soon such that the immediate commencement” of bankruptcy proceedings “is necessary to prevent serious adverse effects on financial stability in the United States;

and bankruptcy proceedings are “necessary to prevent serious adverse effects on financial stability in the United States.”

These thresholds are similar to those of financial regulators being able to force a financial institution into the Dodd-Frank bailout authority. Some believe that the bill does not define how the Federal Reserve will go about showing that a bank will be insolvent sufficiently soon nor

does it define exactly how the Federal Reserve will prove that the bankruptcy proceedings are necessary to prevent serious adverse effects on financial stability in the United States. Others believe that requiring the courts to approve the bankruptcy petition provides a check on the regulator.

If the Federal Reserve petitions the court to place a financial institution into this bankruptcy process, notice shall only be given to the institution, the Federal Deposit Insurance Corporation (FDIC), and the Treasury. Proceedings at the court would be sealed “if their disclosure could create financial instability in the United States.”

**Additional Background:** The [Dodd-Frank Wall Street Reform and Consumer Protection Act](#) established a new “Orderly Liquidation Authority” for large financial institutions. Many conservatives have criticized this authority as codifying bailouts of “too-big-to-fail” financial institutions. According to the most recent [CBO](#) estimate, the bailout authority will cost \$19 billion over the 2015-2024 period.

**Committee Action:** H.R. 5421 was introduced on September 9, 2014, and referred to the House Judiciary Committee. The Committee marked up the bill on [September 10, 2014](#), and reported H.R. 5421 by a voice vote.

Three legislative hearings on this issue were held: [The Bankruptcy Code and Financial Institution Insolvencies](#) on December 3, 2013; [Exploring Chapter 11 Reform: Corporate and Financial Institution Insolvencies; Treatment of Derivatives](#) on March 26, 2014; and [H.R. \\_\\_\\_\\_\\_, the “Financial Institution Bankruptcy Act of 2014”](#) on July 15, 2014.

**Possible Conservative Concerns:** Some conservatives may be concerned that this legislation does nothing to repeal the Dodd-Frank bailout authority, and could perpetuate the notion of “too-big-to-fail” financial institutions.

On the other hand, some conservatives argue that this new bankruptcy process will provide an alternative that would be more likely to be pursued to the Dodd-Frank bailout authority.

A recent [Wall Street Journal](#) editorial against the bill states that: “It’s puzzling that Republicans would want to rush this bill through in the waning days of a lame duck session with a Democratic Senate that will soon vanish, unless they have some private deal with the Senate to sneak this into law without scrutiny. The GOP should try again next year with a reform that begins with a larger Dodd-Frank rewrite and includes a prohibition on taxpayer bailouts.”

**Cost to Taxpayers:** According to [CBO](#), H.R. 5421 would “have no significant effect on the budget, including discretionary spending, over the next 10 years.”

Although the CBO projects that the Dodd-Frank bailout authority will cost \$19 billion over the 2015-2024 period, CBO believes that the bankruptcy process established by H.R. 5421 would be used in instances where the bailout authority is not used.

**Outside Groups:** Douglas Holtz-Eakin of the [American Action Forum](#) supports the bill.

**Does the Bill Expand the Size and Scope of the Federal Government?:** No.

**Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?:** Yes. According to [CBO](#), H.R. 5421 would “impose a private-sector mandate, as defined in UMRA, on entities that have certain types of contracts with a bank holding company or a large financial institution that has entered the bankruptcy process established under the bill.”

**Does the Bill Contain Any Federal Encroachment into State or Local Authority in Potential Violation of the 10<sup>th</sup> Amendment?:** No.

**Does the Bill Delegate Any Legislative Authority to the Executive Branch?:** No.

**Does the Bill Contain Any Earmarks/Limited Tax Benefits/Limited Tariff Benefits?:** No.

**Constitutional Authority:** “Congress has the power to enact this legislation pursuant to the following: Article I, Section 8, clause 3 of the United States Constitution, in that the legislation exercises legislative power granted to Congress by that clause “to regulate Commerce with foreign Nations, and among the several States, and with Indian tribes;” Article I, Section 8, clause 4 of the United States Constitution, in that the legislation exercises legislative power granted to Congress by that clause “to establish ... uniform Laws on the subject of Bankruptcies throughout the United States;” Article I, Section 8, clause 9 of the United States Constitution, in that the legislation exercises legislative power granted to Congress by that clause “to constitute Tribunals inferior to the Supreme Court;” Article I, Section 8, clause 18 of the United States Constitution, in that the legislation exercises legislative power granted to Congress by that clause “to make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof;” and, Article III of the United States Constitution, in that the legislation defines or affects powers of the Judiciary that are subject to legislation by Congress.”

**RSC Staff Contact:** Matt Dickerson, [matthew.dickerson@mail.house.gov](mailto:matthew.dickerson@mail.house.gov), 6-9718

**NOTE:** *RSC Legislative Bulletins are for informational purposes only and should not be taken as statements of support or opposition from the Republican Study Committee.*

###